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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C. ROBERT PETTIT, M.D.

Plaintiff,

vs.

CONTRA COSTA MEDICAL SERVICES
REGIONAL MEDICAL CENTER and DOES
ONE THROUGH TWENTY, Inclusive

Defendants,

Case No.: 3:07-cv-03358 JSW

COMPLAINT

1. Wrongful Termination
2. Breach Of Contract
3. Whistleblowing
4. Violation Of Public Policy
5. Breach of the Implied
Covenant of Good Faith And
Fair Dealing
6. Age Discrimination

CLAIM FOR PUNITIVE DAMAGES AND
A CIVIL PENALTY

JURY TRIAL DEMANDED

Plaintiff C. ROBERT PETTIT, M.D. complains of Defendants and each of them and
demands a trial by jury of all legal issues and for claims alleges:

FACTS COMMON TO ALL CLAIMS

1
2 1. **JURISDICTION:** This Court has subject matter jurisdiction as to federal
3 subject matter issues pursuant to 28 USC §1331 and pendant jurisdiction over related state
4 claims.

5 2. At all times herein mentioned, Plaintiff C. ROBERT PETTIT, M.D., a 65 year
6 old, Board certified Otolaryngology, Head and Neck Surgeon, was employed by CONTRA
7 COSTA MEDICAL SERVICES REGIONAL MEDICAL CENTER (hereafter: "REGIONAL
8 MEDICAL CENTER"), a California quasi-municipal entity doing business in the county of
9 Contra Costa.

10 3. At all times herein mentioned Plaintiff was and is a resident of the city of
11 Martinez, County of Contra Costa, State of California. Plaintiff has resided in the city of
12 Martinez for a number of years and at all times has enjoyed a good reputation both generally and
13 in his occupation.

14 4. Plaintiff was employed by REGIONAL MEDICAL CENTER from February 1,
15 2005 through March 3, 2007.

16
17 5. Defendant REGIONAL MEDICAL CENTER, DOES One through Twenty,
18 and management employees (hereinafter referred to collectively as "THE REGIONAL
19 MEDICAL CENTER") were, and at all times herein mentioned, doing business as CONTRA
20 COSTA MEDICAL SERVICES REGIONAL MEDICAL CENTER in the State of California,
21 and the County of Contra Costa. Said Entity is a resident of Martinez, California and that is its
22 principal place of business, and Defendant does business within the state under the name listed in
23 the caption, together with other names that are unknown. At all times herein relevant, Plaintiff
24 worked for Defendant at REGIONAL MEDICAL CENTER in the city of Martinez, where the
25 conduct relating to the torts and statutory violations and other wrongful conduct occurred.

1 6. The true names or capacities, whether individual, corporate, associate, or
2 otherwise, of Defendants DOES One through Ten, inclusive, are unknown to Plaintiff, who
3 therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and
4 thereon alleges that each of the Defendants designated herein as a DOE is responsible in some
5 manner for the occurrences herein alleged, and that Plaintiff's injuries as herein alleged were
6 proximately caused by the wrongful conduct of these defendants.

7
8 7. Plaintiff is informed and believes and thereon alleges that DOES Eleven
9 through Twenty, and each of them, were and are the managerial employees of Defendant
10 REGIONAL MEDICAL CENTER and DOES One through Ten. In doing the acts and things
11 hereinafter alleged, these management employees and DOES Eleven through Twenty were
12 acting within the course and scope of their agency and/or employment and with the permission
13 and consent of Defendant REGIONAL MEDICAL CENTER and DOES One through Ten. Said
14 management employees were in such a significant position that they were able to determine the
15 policy of the Defendant entity REGIONAL MEDICAL CENTER.

16 8. The term "Defendant Employer" will refer to Defendant REGIONAL
17 MEDICAL CENTER, and DOES One through Ten acting by and through itself and its
18 management employees and DOES Eleven through Twenty, and each of them, unless otherwise
19 indicated.

20
21 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted
22 with knowledge, instructions, and ratification of each of the other supervising Defendants.

23 10. Plaintiff is informed and believes and thereon alleges that at all times herein
24 mentioned each of the above-mentioned Defendants was the agent and employee of each of the
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1 remaining Defendants, and in doing the things hereinafter alleged, was acting within the course
2 and scope of such agency and employment.

3 11. Plaintiff was hired by Defendant as Ear Nose and Throat (ENT) Specialist on
4 February 1, 2005 under a written contract of employment. The contract term ran from February
5 1, 2005, through January 31, 2008, with a limit of \$1,117,000. A true and correct copy of the
6 written agreement is attached as "Exhibit 1".

7 12. This is a complaint by a terminated employee against the defendant employer
8 for damages arising out of the termination of employment in breach of Plaintiff's written contract
9 and for Defendant's age discrimination against Plaintiff and retaliation for Plaintiff's whistle
10 blowing. Plaintiff seeks general, special, compensatory, incidental and consequential, and
11 punitive damages.
12

13 **FIRST CLAIM**

14 **TORTIOUS WRONGFUL TERMINATION**

15
16 13. As a First, separate and distinct claim and cause of action, Plaintiff complains
17 against Defendant REGIONAL MEDICAL CENTER and DOES ONE THROUGH TEN, and
18 for a cause of action alleges:

19 14. At all times herein mentioned:

- 20 a. Defendant REGIONAL MEDICAL CENTER was and is the name under
21 which REGIONAL MEDICAL CENTER operates in this jurisdiction, and
22 said entity is a California quasi-municipality and subdivision of the County of
23 Costa doing business within the State of California, with its headquarters in
24 the City of Martinez, California.
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1 b. Plaintiff C. ROBERT PETTIT, M.D. was employed by REGIONAL
2 MEDICAL CENTER for approximately two years. Plaintiff worked for
3 Defendant in the city of Martinez, in the County of Contra Costa on February
4 1, 2005. Plaintiff was terminated on March 3, 2007. The defendant employer
5 was wrong and tortuous, as will be described below.

6 15. Plaintiff C. ROBERT PETTIT, M.D. was employed by REGIONAL
7 MEDICAL CENTER under a written contract of employment for a term of three years. In
8 accordance with Paragraph 2, Special Conditions of the contract, the cancellation of contract
9 required 60 days' notice. Plaintiff performed his job in a satisfactory manner; and discipline,
10 demotion or discharge, if any, would only be for good cause proven and then would be carried
11 out only in accordance with the stated written policies of the employer. Plaintiff therefore, had an
12 expectation of continued employment with discharge only for good cause proven based upon the
13 following:

14 16. Plaintiff worked for Defendant approximately two years;

15 17. Plaintiff occupied a position of importance and responsibility as a medical
16 doctor and as a board certified Ear Nose and Throat (ENT) Specialist. He was one of three ENT
17 doctors at the REGIONAL HEALTH CENTER, and he saw substantially more clinic patients
18 and performed more surgery than either of his colleagues.

19 18. Since 1975, Dr. Pettit has held a position of Assistant Clinical Professor at
20 UCSF School of Medicine. He was the only ENT doctor at the REGIONAL HEALTH CENTER
21 with an academic appointment.

22 19. Since 2002, Dr. Pettit has been a Medical Consultant for the Enforcement
23 Division of the Medical Board of California, a position that requires him to make daily decisions
24 about what practice behavior constitutes a departure from the Standard of Care.
25

1 20. Plaintiff believed all laws of the United States and of the State of California,
2 including prohibition against age discrimination in the workplace and retaliation for whistle
3 blowing, were implied contract terms of his employment; this was evidenced by the posting of
4 various labor regulations at the workplace. Plaintiff further alleges that this created a duty of care
5 for Defendant to follow these laws.

6 21. Until the events described below, Plaintiff never received any significant
7 criticism regarding his work performance. Based on the foregoing, Defendant owed a duty to
8 Plaintiff to operate its business with the standard of care owed by an employer to an employee
9 and to follow the laws of the United States and the State of California.

10 22. On August 29, 2006, the ENT doctor on emergency call, Dr. Keating, did not
11 leave his home and go to the hospital to see three ENT patients who presented to the emergency
12 room that night, two of which had potentially life-threatening problems. Dr. Keating also did not
13 come to the hospital to see the patients the next morning, and he left for vacation in the afternoon
14 without notifying any other ENT doctors about the patients.

15 23. As a result of Dr. Keating's failure to come to the hospital, one patient, with a
16 nose-bleed, bled to the point of anemia that required hospitalization, and he had painful packing
17 placed in both nostrils by non-specialists. The second patient had a peritonsillar abscess, a
18 painful collection of pus behind the tonsil, which caused swelling in his throat severe enough to
19 cause symptoms of airway obstruction, swallowing difficulty, and admission to the intensive care
20 unit, and which could have required immediate draining or even emergency tracheostomy due to
21 the threat to the airway. The third patient, a diabetic, did not receive ENT evaluation of a severe
22 facial infection that could have required immediate incision and draining.
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1 24. On or about September 5, 2006, Dr. Pettit sent an email to the ENT Section
2 Chief, Dr. Corcoran, notifying her of these dangerous incidents of substandard care. He stated
3 that dangerous incidents were repeatedly occurring at REGIONAL MEDICAL CENTER
4 because of the long distance that on-call doctors live from the facility and the failure of
5 Defendant to demand they perform adequate medical services.

6 25. On or about September 20, 2006, Dr. Pettit brought up the events of August 29,
7 2006 at an ENT section meeting. Dr. Keating then threatened Dr. Pettit at the meeting with
8 “warfare”.
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10 26. After that meeting, and for the first time, Dr. Keating began writing
11 inflammatory emails to Plaintiff questioning his management of patients. Dr. Keating sent copies
12 of the emails to Dr. Corcoran and Dr. Berguer, Chief of Surgery.

13 27. On November 28, 2006, Dr. Berguer called Dr. Pettit into his office and
14 verbally threatened to fire Dr. Pettit for his “style of practice” and “inability to get along with Dr.
15 Keating.” No disciplinary action was taken against Dr. Keating, and Defendant made no effort
16 to remedy the problem and made no effort to improve medical care.

17 28. On November 29, 2006, Dr. Pettit submitted a formal, written complaint to Dr.
18 Berguer, documenting the three incidents of August 29, 2006, and stating that the medical center
19 policies and practices were contributing to patient/public endangerment and a deviation from
20 standard of care. Dr. Pettit also presented the same letter to Dr. Jeffrey Smith, Chief of Staff.
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22 29. As a proximate result of Defendant’s substandard medical care, a 54 year old
23 patient unnecessarily bled to death on the ward of REGIONAL MEDICAL CENTER while the
24 on-call ENT doctor stayed at home, two days after the patient underwent a tracheostomy on
25 February 22, 2007. As a proximate result of REGIONAL MEDICAL CENTER’S substandard

1 medical care, a patient was seen in the emergency room of REGIONAL MEDICAL CENTER on
2 or about January 27, 2007 because of a fishbone foreign body in the throat resulting in pain,
3 swelling, and dysphagia that had been worsening over several days. She was sent home after a
4 telephone consultation with the ENT doctor on call; several days later she was seen routinely in
5 the out-patient clinic, where a large, imbedded fishbone was removed from the tongue base.

6 30. On January 12, 2007, Plaintiff's counsel sent a letter to Dr. Smith advising him
7 of Dr. Pettit's rights in relation to public policy.

8 31. Dr. Pettit filed a complaint with the State Department of Fair Employment of
9 Housing (DFEH), which was served to the defendants on February 12, 2007. See Exhibit 2,
10 attached hereto.

11 32. REGIONAL MEDICAL CENTER cancelled Plaintiff's employment contract
12 as of March 3, 2007. The cancellation letter was dated January 3, 2007, allegedly providing the
13 60 days' notice required under the contract. See Exhibit 1, attached here to. Although the letter
14 could have easily been hand delivered to Plaintiff, the letter was instead posted by mail on
15 January 26, 2007 and received by Plaintiff in the mail on or about January 29, 2007, providing
16 substantially less than 60 days' notice.

17 33. The above termination was a wrongful termination and tortious of Plaintiff's
18 employment. Defendants, and each of them, owed Plaintiff a duty not to discriminate against
19 Plaintiff on the basis of his age or in retaliation for whistleblowing. Furthermore, Plaintiff was
20 protected by California Government Code 12940, et seq., and other state laws that prohibit
21 discrimination and retaliation. These statutes create an important public policy.

22 34. All conditions precedent had been satisfied and Plaintiff had fulfilled all
23 conditions and obligations to be performed on his part under the written contract.
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1 35. The termination of Plaintiff was a breach of the duties Defendants owed
2 Plaintiff in his employment, and as such breached Defendant's standard of care not to terminate
3 whistle blowers and constituted a tortuous termination of the employment contract by the
4 employer in violation of public policy.

5 36. As a proximate result of the tortuous conduct, Plaintiff has suffered the loss of
6 past and future income as compensatory damages in an amount according to proof.

7 37. Plaintiff also lost benefits and other consequential and incidental damages.
8 Plaintiff claims such amount as damages together with prejudgment interest pursuant to Civil
9 Code Section 3287 and/or any other provision of law providing for prejudgment interest.

10 38. As a proximate result of the aforesaid acts of Defendants, Plaintiff became
11 mentally upset, frustrated, angered, humiliated, depressed, vexed, distressed and aggravated. The
12 emotional distress was severe and has resulted in mental and emotional injuries. Plaintiff
13 therefore claims general damages for such mental distress and aggravation in a sum according to
14 proof.

15 39. As a proximate cause of the breach of duty by Defendants, Plaintiff suffered
16 personal injuries and special damages for health care for his personal injuries. Plaintiff seeks an
17 award for these past and future damages according to proof.

18 40. Plaintiff filed a timely claim under California's Tort Claims Act; said claim
19 was rejected by this quasi-municipal organization, and this claim was timely filed thereafter.

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22 **SECOND CLAIM**
 BREACH OF CONTRACT

23 As a Second, separate and distinct claim and cause of action, Plaintiff complains against
24 Defendants and each of them, for a cause of action alleges:
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1 41. Plaintiff incorporates by reference paragraphs 1 through 40 as though fully
2 pleaded here.

3 42. On or about February 1, 2005 Plaintiff entered into a written employment
4 agreement with REGIONAL MEDICAL CENTER, and Plaintiff was hired by Defendant as Ear
5 Nose and Throat (ENT) Specialist. A written contract creating the obligation in which this
6 action is brought, was entered in the City of Martinez, County of Contra Costa, and a true and
7 correct copy is attached as Exhibit 1.

8 43. The contract term ran from February 1, 2005, through January 31, 2008, with a
9 limit of \$1,117,000. In accordance with Paragraph 2, Special Conditions of the contract, the
10 cancellation of contract required 60 days' notice.

11 44. On February 1, 2005 REGIONAL MEDICAL CENTER cancelled Plaintiff's
12 employment contract as of March 3, 2007. The cancellation letter was dated January 3, 2007,
13 allegedly providing 60 days' notice. Although the letter could have easily been hand delivered to
14 Plaintiff, the letter was instead posted by mail on January 26, 2007 and received by Plaintiff in
15 the mail on or about January 29, 2007, providing substantially less than 60 days' notice.

16 45. Defendant stopped making payments on the contract after March 3, 2007,
17 owing Plaintiff one third of the contract amount of \$1,117,000. As a proximate result of
18 Defendant's failure to pay, Defendant has breached the written agreement.

19 46. Plaintiff has performed all obligations and conditions to be performed on his
20 part and all conditions precedent have occurred.

21 47. As a proximate result of Defendant's breach of contract, Plaintiff is entitled to
22 the balance of \$386,610.00 owed plus interest at the rate of 10% from March 3, 2007 to the date
23 of judgment or January 31, 2008, whichever should last occur.
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1 48. Plaintiff filed a timely claim under California's Tort Claims Act; said claim
2 was rejected by this quasi-municipal organization, and this claim was timely filed thereafter.

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4 **THIRD CLAIM**
5 **RETALIATION FOR WHISTLE BLOWING**

6 As a Third, separate and distinct claim and cause of action, Plaintiff complains against
7 Defendants and each of them, for a cause of action alleges:

8 49. Plaintiff incorporates by reference paragraphs 1 through 48 as though fully
9 pleaded here.

10 50. At all times herein mentioned and at all times herein relevant, the State of
11 California had a public policy, enunciated in Labor Code §1102.5, to protect whistle blowers and
12 that statute protects whistle blowers from retaliation and discrimination for reporting unlawful
13 and unethical conduct to a government agency, including a public entity employer. .

14 51. On August 29, 2006, the ENT doctor on emergency call, Dr. Keating, did not
15 leave his home and come to the hospital to see three ENT emergency patients who presented to
16 the emergency room that night, two of which had potentially life-threatening problems. Dr.
17 Keating also did not come to the hospital to see the patients the next morning, and he left for
18 vacation in the afternoon without notifying any other ENT doctors about the patients.

19 52. As a result of Dr. Keating's failure to come to the hospital, one patient, with a
20 nose-bleed, bled to the point of anemia that required hospitalization, and he had painful packing
21 placed in both nostrils by non-specialists. The second patient had a peritonsillar abscess, a
22 painful collection of pus behind the tonsil, which caused swelling in his throat severe enough to
23 cause symptoms of airway obstruction, swallowing difficulty, and admission to the intensive care
24 unit, and which could have required immediate draining or even emergency tracheostomy due to
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1 the threat to the airway. The third patient, a diabetic, did not receive ENT evaluation of a severe
2 facial infection that could have required immediate incision and draining.

3 53. On or about September 5, 2006, Dr. Pettit sent an email to the ENT Section
4 Chief, Dr. Corcoran, notifying her of these dangerous incidents of substandard care, and he
5 stated that dangerous incidents were repeatedly occurring at REGIONAL MEDICAL CENTER
6 because of the long distance that on-call doctors live from the facility.

7 54. On or about September 20, 2006, Dr. Pettit brought up the events of August 29,
8 2006 at an ENT section meeting. Dr. Keating then threatened Dr. Pettit at the meeting with
9 “warfare”. No disciplinary action was taken against Dr. Keating, and no efforts were made to
10 correct the dangerous situation and improve medical care.

11 55. After that meeting, and for the first time, Dr. Keating began writing
12 inflammatory emails to Plaintiff questioning his management of patients. Dr. Keating sent copies
13 of the emails to Dr. Corcoran and Dr. Berguer, Chief of Surgery.

14 56. On November 29, 2006, Dr. Pettit submitted a formal, written complaint to Dr.
15 Berguer, documenting the three incidents of August 29, 2006, and stating that the medical center
16 policies and practices were contributing to patient/public endangerment and to a deviation from
17 standard of care. Dr. Pettit also presented the same letter to Dr. Jeffrey Smith, Chief of Staff.

18 57. As a proximate result of Defendant’s substandard medical care, a 54 year old
19 patient unnecessarily bled to death on the ward of REGIONAL MEDICAL CENTER while the
20 on-call ENT doctor stayed at home, two days after the patient underwent a tracheostomy on
21 February 22, 2007. As a proximate result of REGIONAL MEDICAL CENTER’s substandard
22 medical care, a patient was seen in the emergency room of REGIONAL MEDICAL CENTER on
23 or about January 27, 2007 because of a fishbone foreign body in the throat resulting in pain,
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1 swelling, and dysphasia that had been worsening over several days. She was sent home after a
2 telephone consultation with the ENT doctor on call; several days later she was seen routinely in
3 the out-patient clinic, where a large, imbedded fishbone was removed from the tongue base.

4 58. On January 12, 2007, Plaintiff's counsel sent a letter to Dr. Smith advising him
5 of Dr. Pettit's rights in relation to public policy.

6 59. On February 12, 2007 Dr. Pettit served Defendant with a complaint that he
7 filed with the State Department of Fair Employment of Housing (DFEH), which alleged that
8 Plaintiff was being harassed for whistle blowing. See Exhibit 2, attached hereto.

9 60. REGIONAL MEDICAL CENTER cancelled Plaintiff's employment contract
10 as of March 3, 2007, without just cause and in breach of the document's terms. Said breach of
11 contract was in retaliation for Plaintiff's whistle blowing.

12 61. As a result of the aforesaid acts of Defendants, Plaintiff has become mentally
13 upset, frustrated, angered, humiliated, depressed, vexed, distressed and aggravated. The
14 emotional distress was severe and Plaintiff has suffered injury within the last two years and said
15 injury has resulted in mental and emotional injuries; Plaintiff is informed, believes and thereon
16 alleges that these injuries require medical treatment; Plaintiff therefore claims general damages
17 for such mental distress and aggravation in a sum according to proof.

18 62. As a proximate result of the breach of contract, Plaintiff has suffered the loss of
19 past and future income as compensatory damages in an amount according to proof.

20 63. Plaintiff also lost benefits, stock options, profit sharing, and other consequential
21 and incidental damages. Plaintiff claims such amount as damages together with prejudgment
22 interest pursuant to Civil Code Section 3287 and/or any other provision of law providing for
23 prejudgment interest.
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1 64. Plaintiff filed a timely claim under California's Tort Claims Act; said claim
2 was rejected by this quasi-municipal organization, and this claim was timely filed thereafter.
3 Plaintiff is therefore entitled to a statutory penalty of \$10,000.00 for the conduct of Defendant in
4 retaliating against him for whistleblowing.

5
6 **FOURTH CLAIM**
 VIOLATION OF PUBLIC POLICY

7 As a Fourth, separate and distinct claim and cause of action, Plaintiff complains against
8 Defendants and each of them, for a cause of action alleges:

9 65. Plaintiff incorporates by reference paragraphs 1 through 64 as though fully
10 pleaded here.

11 66. At all times herein mentioned and at all times herein relevant, the State of
12 California and the United States Government had a public policy to protect whistle blowers,
13 enunciated in statutes like Labor Code §1102.5, et seq. and case law, including, but not limited to
14 *Tameny v. Atlantic Richfield*, to protect whistle blowers from retaliation and discrimination.
15 Medical doctors have an ethical and legal duty to report sub-standard care, particularly treatment
16 that endangers the health and safety of the public or that results in death.

17 67. On August 29, 2006, the ENT doctor on emergency call, Dr. Keating, did not
18 leave his home and come to the hospital to see three ENT emergency patients who presented to
19 the emergency room that night, two of which had potentially life-threatening problems. Dr.
20 Keating also did not come to the hospital to see the patients the next morning, and he left for
21 vacation in the afternoon without notifying any other ENT doctors about the patients.

22 68. As a result of Dr. Keating's failure to come to the hospital, one patient, with a
23 nose-bleed, bled to the point of anemia that required hospitalization, and he had painful packing
24 placed in both nostrils by non-specialists. The second patient had a peritonsillar abscess, a
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1 painful collection of pus behind the tonsil, which caused swelling in his throat severe enough to
2 cause symptoms of airway obstruction, swallowing difficulty, and admission to the intensive care
3 unit, and which could have required immediate draining or even emergency tracheostomy due to
4 the threat to the airway. The third patient, a diabetic, did not receive ENT evaluation of a severe
5 facial infection that could have required immediate incision and draining.

6 69. On or about September 5, 2006, Dr. Pettit sent an email to the ENT Section
7 Chief, Dr. Corcoran, notifying her of these dangerous incidents of substandard care, and he
8 stated that dangerous incidents were repeatedly occurring at REGIONAL MEDICAL CENTER
9 because of the long distance that on-call doctors live from the facility.

10 70. On or about September 20, 2006, Dr. Pettit brought up the events of August 29,
11 2006 at an ENT section meeting. Dr. Keating then threatened Dr. Pettit at the meeting with
12 “warfare”. No disciplinary action was taken against Dr. Keating, and no efforts were made to
13 correct the dangerous situation and improve medical care.

14 71. After that meeting, and for the first time, Dr. Keating began writing
15 inflammatory emails to Plaintiff questioning his management of patients. Dr. Keating sent copies
16 of the emails to Dr. Corcoran and Dr. Berguer, Chief of Surgery.

17 72. On November 29, 2006, Dr. Pettit submitted a formal, written complaint to Dr.
18 Berguer, documenting the three incidents of August 29, 2006, and stating that the medical center
19 policies and practices were contributing to patient/public endangerment and to a deviation from
20 standard of care. Dr. Pettit also presented the same letter to Dr. Jeffrey Smith, Chief of Staff.

21 73. As a proximate result of Defendant’s continuing substandard medical care, a 54
22 year old patient unnecessarily bled to death on the ward of REGIONAL MEDICAL CENTER
23 while the on-call ENT doctor stayed at home, two days after the patient underwent a
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1 tracheostomy on February 22, 2007. As a proximate result of REGIONAL MEDICAL
2 CENTER's substandard medical care, a patient was seen in the emergency room of REGIONAL
3 MEDICAL CENTER on or about January 27, 2007 because of a fishbone foreign body in the
4 throat resulting in pain, swelling, and dysphagia that had been worsening over several days. She
5 was sent home after a telephone consultation with the ENT doctor on call; several days later she
6 was seen routinely in the out-patient clinic, where a large, imbedded fishbone was removed from
7 the tongue base.

8
9 74. On January 12, 2007, Plaintiff's counsel sent a letter to Dr. Smith advising him
10 of Dr. Pettit's rights in relation to public policy.

11 75. On February 12, 2007 Dr. Pettit served Defendant with a complaint that he
12 filed with the State Department of Fair Employment of Housing (DFEH). See Exhibit 2, attached
13 hereto.

14 76. REGIONAL MEDICAL CENTER cancelled Plaintiff's employment contract
15 as of March 3, 2007, without just cause and in breach of the document's terms. Said breach of
16 contract was in violation of public policy for Plaintiff's whistle blowing.

17 77. As a result of the aforesaid acts of Defendants, Plaintiff has become mentally
18 upset, frustrated, angered, humiliated, depressed, vexed, distressed and aggravated. The
19 emotional distress was severe and Plaintiff has suffered injury within the last two years and said
20 injury has resulted in mental and emotional injuries; Plaintiff is informed, believes and thereon
21 alleges that these injuries require medical treatment; Plaintiff therefore claims general damages
22 for such mental distress and aggravation in a sum according to proof.
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1 authorities, and in violating important public policies intended to protect the public from the type
2 of harm which occurred here.

3 85. Defendant's conduct breached the implied covenant of good faith and fair
4 dealing, and this breach was a proximate cause of Plaintiff's injuries.

5 86. As a result of the aforesaid acts of Defendants, Plaintiff has become mentally
6 upset, frustrated, angered, humiliated, depressed, vexed, distressed and aggravated. The
7 emotional distress was severe and Plaintiff has suffered injury within the last two years and said
8 injury has resulted in mental and emotional injuries; Plaintiff is informed, believes and thereon
9 alleges that these injuries require medical treatment; Plaintiff therefore claims general damages
10 for such mental distress and aggravation in a sum according to proof.
11

12 87. As a proximate result of the breach of contract, Plaintiff has suffered the loss of
13 past and future income as compensatory damages in an amount in excess of \$387,000.00,
14 according to proof.

15 88. Plaintiff also lost benefits, stock options, profit sharing, and other consequential
16 and incidental damages. Plaintiff claims such amount as damages together with prejudgment
17 interest pursuant to Civil Code Section 3287 and/or any other provision of law providing for
18 prejudgment interest.

19 89. Plaintiff filed a timely claim under California's Tort Claims Act; said claim
20 was rejected by this quasi-municipal organization, and this claim was timely filed thereafter.
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22 **SIXTH CLAIM OF ACTION**
23 **AGE DISCRIMINATION**

24 As a Sixth, separate and distinct cause of action, Plaintiff complains against Defendants
25 and each of them, for a cause of action alleges:

1 90. Plaintiff incorporates by reference paragraphs 1 through 89 as though fully
2 pleaded here.

3 91. At all times herein relevant, the Fair Employment and Housing Act (FEHA)
4 California Government Code § 12920, *et seq.*, Title VII, 42 USC 200, and the Age
5 Discrimination in Employment Act (ADOA), 29 USC §621-634, were and are in full force and
6 effect. These statutory provisions and related case law forbid the discrimination in employment
7 based on the age of the employee.

8 92. Plaintiff, at the time of his termination was 65 years of age and within the class
9 sought to be protected by the FEHA and other state and federal laws protecting workers from age
10 discrimination. Plaintiff is approximately 20 years older than the other two ENT doctors at
11 REGIONAL MEDICAL CENTER.

12 93. Defendant began a campaign of harassment based on Plaintiff's advanced age
13 with the professed intent to have him quit due to stress. As a proximate result of this harassment,
14 Plaintiff was constructively terminated as of March 3, 2007.

15 94. At all times herein mentioned Plaintiff was performing his job satisfactorily.

16 95. Plaintiff's age was a substantial factor in the termination of Plaintiff by
17 defendant.

18 96. The termination violates the FEHA § 12940 *et seq.* of the Cal. Gov. Code and
19 is age discrimination which has proximately caused injuries to the Plaintiff. Plaintiff is entitled to
20 the equitable relief of reinstatement to her position, with back pay.

21 97. As a result of Defendants' conduct, Plaintiff has suffered special damages for
22 medical care and counseling in an amount according to proof.

23 98. As a proximate result of the discrimination based on Plaintiff's age, Plaintiff
24 has suffered the loss of past and future income as compensatory damages in an amount according
25 to proof.

1 99. Plaintiff also lost benefits, stock options, profit sharing, and other consequential
2 and incidental damages. Plaintiff claims such amount as damages together with prejudgment
3 interest pursuant to Civil Code Section 3287 and/or any other provision of law providing for
4 prejudgment interest.

5 100. As a result of the aforesaid acts of Defendants, Plaintiff has become mentally
6 upset, frustrated, angered, humiliated, depressed, vexed, distressed and aggravated. The
7 emotional distress was severe and Plaintiff has suffered injury within the last year and said injury
8 has resulted in mental and emotional injuries; Plaintiff is informed, believes and thereon alleges
9 that these injuries require medical treatment; Plaintiff therefore claims general damages for such
10 mental distress and aggravation in a sum according to proof.

11 101. Because the acts taken toward Plaintiff were carried out by managerial
12 employees acting in a deliberate, cold, callous and intentional manner in order to maliciously
13 injure and damage Plaintiff, and by fraudulent means Plaintiff requests the assessment of
14 punitive damages against Defendants, and each of them, in an amount according to proof.

15 102. Plaintiff filed a Complaint with the Department of Fair Housing and
16 Employment [DFEH] and received a Right to Sue letter, which was served on Defendant on
17 February 12, 2007. A true and correct copy of that document is attached as "Exhibit 2" and is
18 incorporated by reference as though fully pleaded herein. Plaintiff retained the services of Rand
19 L. Stephens to represent this action and therefore, pursuant to Government Code Section 12926
20 (b), and other state laws, requests an award of reasonable attorney fees against Defendants, and
21 each of them, according to proof.

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24 **CLAIM FOR PUNITIVE DAMAGES**

25 **Against all Defendants**

6. Attorney fees according to proof;
7. Punitive damages in the sum according to proof;
8. Costs of suit; and
9. For such other and further relief as the court deems proper.

Dated: June 22, 2007

RAND L. STEPHENS, Attorney for
Plaintiff, C. ROBERT PETTIT, M.D.

JURY TRIAL DEMANDED

Notwithstanding the fact Plaintiff has pleaded, in part, for equitable relief from the Court, Plaintiff demands trial of all legal issues by Jury.

Dated: June 22, 2007

RAND L. STEPHENS, Attorney for
Plaintiff, C. ROBERT PETTIT, M.D.

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EXHIBIT 1

EXHIBIT 2

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